

normal course of the business of providing that wire or electronic communication service; or

(ii) An officer, agent, or employee of, or a person under contract with, the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities.

NOTE TO PARAGRAPH (b)(1): For SL reasons, license applications will generally be denied to countries that are subject to controls for AT reasons.

NOTE TO PARAGRAPH (b)(1)(i): The normal course of the business of providing a wire or electronic communications service includes any activity which is a necessary incident to the rendition of the service or to the protection of the rights and property of the provider of that service.

(2) Other license applications will generally be denied for exports or reexports requiring a license for SL reasons.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of communications interception devices.

(d) *U.S. controls.* Controls on items classified under ECCNs 5A980, 5D980, and 5E980 are maintained by the United States government for foreign policy purposes.

[61 FR 12786, Mar. 25, 1996, as amended at 71 FR 67036, Nov. 20, 2006]

**§ 742.14 Significant items: hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems.**

(a) *License requirement.* Licenses are required for all destinations, except Canada, for ECCNs having an "SI" under the "Reason for Control" paragraph. These items include hot section technology for the development, production or overhaul of commercial aircraft engines controlled under ECCN 9E003.a.1. through a.12., .f, and related controls.

(b) *Licensing policy.* Pursuant to section 6 of the Export Administration Act of 1979, as amended, foreign policy controls apply to technology required for the development, production or overhaul of commercial aircraft engines controlled by ECCN 9E003.a.1. through a.12, .f, and related controls.

These controls supplement the national security controls that apply to these items. Applications for export and reexport to all destinations will be reviewed on a case-by-case basis to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. The following factors are among those that will be considered to determine what action will be taken on license applications:

- (1) The country of destination;
- (2) The ultimate end-user(s);
- (3) The technology involved;
- (4) The specific nature of the end-use(s); and
- (5) The types of assurance against unauthorized use or diversion that are given in a particular case.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this § 742.14.

(d) [Reserved]

[64 FR 13339, Mar. 18, 1999]

**§ 742.15 Encryption items.**

Encryption items can be used to maintain the secrecy of information, and thereby may be used by persons abroad to harm U.S. national security, foreign policy and law enforcement interests. The United States has a critical interest in ensuring that important and sensitive information of the public and private sector is protected. Consistent with our international obligations as a member of the Wassenaar Arrangement, the United States has a responsibility to maintain control over the export and reexport of encryption items. As the President indicated in Executive Order 13026 and in his Memorandum of November 15, 1996, exports and reexports of encryption software, like exports and reexports of encryption hardware, are controlled because of this functional capacity to encrypt information, and not because of any informational or theoretical value that such software may reflect, contain, or represent, or that its export or reexport may convey to others abroad. For this reason, export controls on encryption software are distinguished from controls on other software regulated under the EAR.

(a) *Licensing requirements and policy—*

(1) *Licensing requirements.* A license is required to export or reexport encryption items (“EI”) classified under ECCN 5A002.a.1, a.2, a.5, a.6 and a.9; 5D002.a or c.1 for equipment controlled for EI reasons in ECCN 5A002; or 5E002 for “technology” for the “development,” “production,” or “use” of commodities or “software” controlled for EI reasons in ECCNs 5A002 or 5D002 to all destinations, except Canada. Refer to part 740 of the EAR for license exceptions that apply to certain encryption items, and to § 772.1 of the EAR for definitions of encryption items and terms. Most encryption items may be exported under the provisions of License Exception ENC set forth in § 740.17 of the EAR. Before submitting a license application, please review License Exception ENC to determine whether this license exception is available for your item or transaction. For exports and reexports of encryption items that are not eligible for a license exception, exporters must submit an application to obtain authorization under a license or an Encryption Licensing Arrangement.

(2) *Licensing policy.* Applications will be reviewed on a case-by-case basis by BIS, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. Encryption Licensing Arrangements (ELAs) may be authorized for exports and reexports of unlimited quantities of encryption commodities and software to national or federal government bureaucratic agencies for civil use, and to state, provincial or local governments, in all destinations, except countries listed in Country Group E:1 of Supplement No. 1 to part 740. ELAs are valid for four years and may require post-export reporting or pre-shipment notification. Applicants seeking authorization for Encryption Licensing Arrangements must specify the sales territory and class of end-user on their license applications.

NOTE TO PARAGRAPH (a): Pursuant to Note 3 to Category 5 Part 2 of the Commerce Control List in Supplement No. 1 to part 774, once mass market encryption commodities and software have been reviewed by BIS and the ENC Encryption Request Coordinator

(Ft. Meade, MD) and released from “EI” and “NS” controls pursuant to § 742.15(b) of the EAR, they are classified under ECCN 5A992 and 5D992 respectively, and are thereafter outside the scope of this section.

(b) *Review requirement for mass market encryption commodities and software exceeding 64 bits:* Mass market encryption commodities and software employing a key length greater than 64 bits for the symmetric algorithm (including such products previously reviewed by BIS and exported under ECCN 5A002 or 5D002) are subject to the EAR and require review by BIS and the ENC Encryption Request Coordinator (Ft. Meade, MD), prior to export or reexport. Encryption commodities and software that are described in § 740.17(b)(2) of the EAR do not qualify for mass market treatment. A new product review is required if a change is made to the cryptographic functionality (e.g., algorithms) or other technical characteristics affecting mass market eligibility (e.g., performance enhancements to provide network infrastructure services, or customizations to end-user specifications) of the originally reviewed product. However, a new product review is not required when a change involves: The subsequent bundling, patches, upgrades or releases of a product; name changes; or changes to a previously reviewed encryption product where the change is limited to updates of encryption software components where the product is otherwise unchanged.

(1) *Procedures for requesting review.* To request review of your mass market encryption products, you must submit to BIS and the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement No. 6 to this part 742, and you must include specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 (“Information Security”), of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). Review requests must be submitted to BIS in accordance with §§ 748.1 and 748.3 of the EAR. See paragraph (r) of Supplement No. 2 to part 748 of the EAR for special instructions about this submission. Submissions to

the ENC Encryption Request Coordinator should be directed to the mailing address indicated in § 740.17(e)(1)(ii) of the EAR. BIS will notify you if there are any questions concerning your request for review (e.g., because of missing or incompatible support documentation). See paragraph (r) of Supplement No. 2 to Part 748 of the EAR for special instructions about this submission. Submissions to the ENC Encryption Request Coordinator should be directed to the mailing address indicated in § 740.17(e)(1)(ii) of the EAR. BIS will notify you if there are any questions concerning your request for review (e.g., because of missing or incompatible support documentation).

(2) *Action by BIS.* Once BIS has completed its review, you will receive written confirmation concerning the eligibility of your items for export or reexport as mass market encryption commodities or software classified under ECCN 5A992 or 5D992. (Note that once a mass market review request is submitted, there is no waiting period for export or reexport under License Exception ENC to certain end users as authorized by §§ 740.17(a) and (b)(1)(i), or for certain items as authorized by § 740.17(b)(1)(ii), while the mass market request is pending review with BIS.) If, during the course of its review, BIS determines that your encryption items do not qualify for mass market treatment under the EAR, or are otherwise classified under ECCN 5A002, 5B002, 5D002 or 5E002, BIS will notify you and will review your commodities or software for eligibility under License Exception ENC (see § 740.17 of the EAR for review and reporting requirements for encryption items under License Exception ENC). BIS reserves the right to suspend your eligibility to export and reexport under the provisions of this paragraph (b) and to return review requests, without action, if the requirements for review have not been met. Thirty days after BIS registers your review request, you may export or reexport these mass market encryption products, without a license, to government and non-government end-users located in most destinations outside the countries listed in Supplement No. 3 to part 740 of the EAR (certain destinations and persons may require a license

for anti-terrorism (AT) reasons or for reasons specified elsewhere in the EAR), unless otherwise notified by BIS (e.g., because of missing or incomplete support documentation or conversion to License Exception ENC review.) The thirty days does not include any time that your review request is on hold without action.

(3) *Exclusions from review requirements.* The following commodities and software do not require review prior to export or reexport as mass market products.

(i) *Short-range wireless encryption functions.* Commodities and software not otherwise controlled in Category 5, but that are classified under ECCN 5A992 or 5D992 only because they incorporate components or software that provide short-range wireless encryption functions (e.g., with a nominal operating range not exceeding 100 meters according to the manufacturer's specifications). Commodities and software included in this description include those designed to comply with the Institute of Electrical and Electronic Engineers (IEEE) 802.11 wireless LAN standard (35 meters) for short-range use and those designed to comply with the IEEE 802.15.1 standard that provide only the short-range wireless encryption functionality, and would not be classified under Category 5, part 1 of the CCL (telecommunications) absent this encryption functionality. Certain items excluded from review by this paragraph may also be excluded from review under paragraph (b)(3)(iii) of this section (commodities and software that provide "ancillary cryptography").

(ii) [Reserved]

(iii) *"Ancillary cryptography".* Commodities and software that perform "ancillary cryptography." See Nota Bene of definition of "ancillary cryptography" in § 772.1 of the EAR.

(4) *Commodities and software that activate or enable cryptographic functionality.* Commodities, software, and components that allow the end-user to activate or enable cryptographic functionality in encryption products which would otherwise remain disabled, are controlled according to the functionality of the activated encryption product.

(5) *Examples of mass market encryption products.* Subject to the requirements of the Cryptography Note (Note 3) in Category 5, Part 2, of the Commerce Control List, mass market encryption products include, but are not limited to, general purpose operating systems and desktop applications (e.g., e-mail, browsers, games, word processing, database, financial applications or utilities) designed for use with computers classified as ECCN 4A994 or EAR99, laptops, or hand-held devices; commodities and software for client Internet appliances and client wireless LAN devices; home use networking commodities and software (e.g., personal firewalls, cable modems for personal computers, and consumer set top boxes); and portable or mobile civil telecommunications commodities and software (e.g., personal data assistants (PDAs), radios, or cellular products).

[73 FR 57507, Oct. 3, 2008]

EDITORIAL NOTE: At 73 FR 49329, Aug. 21, 2008, § 742.15 was amended by revising (b)(2)(i), effective Oct. 20, 2008; however, the amendment could not be incorporated because (b)(2)(i) does not exist.

#### § 742.16 [Reserved]

#### § 742.17 Exports of firearms to OAS member countries.

(a) *License requirements.* BIS maintains a licensing system for the export of shotguns and related items to all OAS member countries. This action is based on the Organization of American States (OAS) Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Munitions (OAS Model Regulations) which were developed to assist OAS member countries to implement the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (Firearms Convention).<sup>1</sup> Items subject to these controls are identified by “FC Column 1” in the “License Requirements” section of their Export Control Classification Number (ECCN) on the Commerce Control List (CCL). If “FC Column 1” of

<sup>1</sup> Status of Convention as of April 13, 1999 had not entered into force.

the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated for a particular country, a license is required for export to that destination. Licenses will generally be issued on an Import Certificate or equivalent official document, satisfactory to BIS, issued by the government of the importing country is also required for the export of such items to OAS member countries.

(b) *Licensing policy.* Applications supported by an Import Certificate or equivalent official document issued by the government of the importing country for such items will generally be approved, except there is a policy of denial for applications to export items linked to such activities as drug trafficking, terrorism, and transnational organized crime.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications under this § 742.17.

(d) *OAS Model Regulations.* The OAS Model Regulations on which regulations are based are designed by OAS member countries to combat illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials in North and South America because of their links to such activities as drug trafficking, terrorism, and transnational organized crime.

(e) *OAS member countries to which firearms controls under this section apply.* The OAS member countries include: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

(f) *Items/Commodities.* Items requiring a license under this section are ECCNs 0A984 (shotguns with a barrel length 18 inches or over and related parts, and buckshot shotgun shells), 0A986 (shotgun shells, and related parts) and 0A987 (optical sighting devices). (See Supplement No. 1 to Part 774 of the EAR.)